

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALLAN WINN and MICHELLE WINN,)	
)	
Plaintiffs,)	
)	
vs.)	CAUSE NO. 1:08-cv-1332-WTL-JMS
)	
ALLSTATE CASUALTY CO.,)	
)	
Defendant.)	

**ORDER ADOPTING IN PART MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The presiding Magistrate Judge in this case has recommended that the case be dismissed with prejudice because of the repeated failures of Plaintiffs' counsel, William J. Rawls, to appear at conferences, comply with Local Rule 5.4, and respond to the Magistrate Judge's orders to show cause. The Magistrate Judge has thoroughly chronicled the details of Mr. Rawls' problems in this case, *see* Docket No. 19 (March 10, 2009, Order to Show Cause); Docket No. 30 (June 16, 2009, Order to Show Cause); Docket No. 32 (Report and Recommendation), and the Court will not repeat them all here. In his response to the Magistrate Judge's Report and Recommendation, Mr. Rawls blames his failures on his unfamiliarity with the court's electronic filing system and on a computer virus which prevented him from receiving email notification regarding the Magistrate Judge's July 6, 2009, hearing. He asks the Court not to dismiss this case, and represents that he is seeking co-counsel who can help him with the electronic filing system. Unfortunately, the time for recognizing and addressing his deficiencies was nine months ago, when this case was first removed from state court, or at least four months ago, when the Magistrate Judge issued her first order to show cause. There is simply no excuse for Mr. Rawls' continued failure to avail himself of the cm/ecf training offered by the court and the readily-

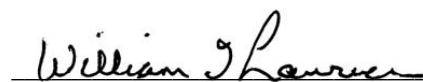
available telephone assistance from the Clerk's Office staff.

The Magistrate Judge makes several recommendations, all of which the Court agrees with, with one exception. While the Court agrees that the sanction of dismissal is entirely appropriate under the circumstances, the Court determines that a dismissal without prejudice which, depending upon the applicable statute of limitations, may permit the Plaintiffs to refile their case, is more just than the dismissal with prejudice recommended by the Magistrate Judge.

Accordingly, the Court **ORDERS** the following:

1. For the reasons set forth in the Magistrate Judge's Report and Recommendation, this case is hereby **dismissed without prejudice** as a sanction for Plaintiffs' counsel's repeated failure to comply with the Magistrate Judge's orders and this court's Local Rules;
2. Plaintiffs' counsel shall be responsible for payment of Defendant's costs in this action, as well as its reasonable attorney fees arising out of defense counsel's appearance at the July 6, 2009, hearing, provided that the Defendant files a Bill of Costs and an affidavit regarding its attorney fees by **August 3, 2009**;
3. Mr. Rawls may not enter his appearance in any case in the Southern District of Indiana until such time as he (a) submits proof that he has attended cm/ecf training; and (b) personally appears before the Chief Judge of this court or his designee and represents his familiarity with this court's Local Rules and his intention to comply with them as well as the orders of the court.

SO ORDERED: 07/21/2009



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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